

LORETTA A. SHEEHAN 4160-0  
CLARE E. CONNORS 7936-0  
THOMAS M. OTAKE 7622-0  
DAVIS LEVIN LIVINGSTON  
851 Fort Street, Suite 400  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-7500  
Facsimile: (808) 356-0418  
Email: [lsheehan@davislevin.com](mailto:lsheehan@davislevin.com)

LYLE S. HOSODA 3964-0  
ADDISON D. BONNER 9163-0  
HOSODA & BONNER, LLC  
Three Waterfront Plaza, Suite 499  
500 Ala Moana Boulevard  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-3700  
Facsimile: (808) 524-3838  
Email: [lush@hosodalaw.com](mailto:lush@hosodalaw.com)

Attorneys for Plaintiff  
MARK N. BEGLEY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MARK N. BEGLEY,

Plaintiff,

vs.

COUNTY OF KAUAI, KAUAI  
POLICE DEPARTMENT; DARRYL  
PERRY; ROY ASHER; MICHAEL  
CONTRADES; AND DOE  
DEFENDANTS 16-100,

Defendants.

Civil No. CV16-00350 LEK-RLP

**ERRATA TO DOCKET 392,  
PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO [323]  
DEFENDANTS COUNTY OF  
KAUAI, KAUAI POLICE  
DEPARTMENT; DARRYL PERRY,  
in his official capacity; ROY  
ASHER, in his official capacity;  
MICHAEL CONTRADES,' in his  
official capacity, SUBSTANTIVE  
JOINDER TO [311] DEFENDANT  
DARRYL PERRY'S, in his  
individual capacity, MOTION FOR  
SUMMARY JUDGMENT, and [312]  
DEFENDANT ROY ASHER'S, in  
his individual capacity, MOTION**

**FOR SUMMARY JUDGMENT AS  
TO PLAINTIFF'S SECOND  
AMENDED COMPLAINT; TABLE  
OF CONTENTS; TABLE OF  
AUTHORITIES; CERTIFICATE  
OF COMPLIANCE; AND  
CERTIFICATE OF SERVICE**

DATE: November 19, 2018

TIME: 9:45 a.m.

JUDGE: Hon. Leslie E. Kobayashi

TRIAL: May 6, 2019

**ERRATA TO DOCKET 392,  
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO [323]  
DEFENDANTS COUNTY OF KAUAI, KAUAI POLICE DEPARTMENT;  
DARRYL PERRY, in his official capacity; ROY ASHER, in his official  
capacity; MICHAEL CONTRADES,' in his official capacity, SUBSTANTIVE  
JOINDER TO [311] DEFENDANT DARRYL PERRY'S, in his individual  
capacity, MOTION FOR SUMMARY JUDGMENT, and [312] DEFENDANT  
ROY ASHER'S, in his individual capacity, MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Upon review of Plaintiff's filing of his Memorandum filed as Docket 392, it was discovered that the Table of Contents, Table of Authorities, and the Certificate of Compliance were inadvertently omitted. Attached are the omitted documents.

DATED: Honolulu, Hawaii, October 30, 2018.

/s/ LORETTA A. SHEEHAN

LORETTA A. SHEEHAN

CLARE E. CONNORS

THOMAS M. OTAKE

LYLE S. HOSODA

ADDISON D. BONNER

Attorneys for Plaintiff

## **TABLE OF CONTENTS**

### TABLE OF AUTHORITIES

I.	INTRODUCTION .....	2
II.	THE FACTS CONTROVERTED IN PLAINTIFF’S MEMORANDA AND CCSMF FILED IN OPPOSITION TO PERRY AND ASHER’S MOTIONS ALSO CONTROVERT THE FACTS RELIED UPON IN DEFENDANT COUNTY’S SJ .....	3
III.	PREVIOUS COURT RULINGS ADDRESS DEFENDANT COUNTY’S LEGAL ARGUMENTS .....	4
IV.	THE EVIDENCE DEMONSTRATES PLAINTIFF SUFFERED ADVERSE EMPLOYMENT ACTIONS AS WELL AS A CAUSAL LINK BETWEEN THE ADVERSE EMPLOYMENT ACTIONS AND PLAINTIFF’S PROTECTED ACTIVITY .....	5
V.	PLAINTIFF’S IIED CLAIM IS SUPPORTED BY EVIDENCE DEFENDANTS ACTED INTENTIONALLY AND WITH NOTICE THAT THEIR ACTIONS WERE LIKELY TO RESULT IN HARM .....	12
VI.	THE WHISTLEBLOWER CLAIM IS NOT TIME-BARRED .....	13
VII.	THE EVIDENCE DEMONSTRATES THAT NONE OF THE DEFENDANTS QUALIFY FOR IMMUNITY UNDER STATE OR FEDERAL LAW .....	15
VIII.	PLAINTIFF’S IIED CLAIM IS NOT BARRED BY THE WORKER’S COMPENSATION STATUTE .....	16
IX.	CONCLUSION .....	17

## **TABLE OF AUTHORITIES**

### *Cases*

<i>Agarwal v. Johnson</i> , 25 Cal. 3d 932, 603 P.2d 58 (1979),.....	13
<i>Crosby v. State Dept. of Budget &amp; Fin.</i> , 76 Hawai‘i 332, 876 P.2d 1300 (1994) .....	14
<i>Dawson v. Entek Int’l</i> , 630 F.3d 928 (9th Cir. 2011).....	9
<i>Edenfield v. Estate of Willets</i> , No. CIV. 05-00418 SOM/BM, 2006 WL 1041724, at *14 (D. Haw. Apr. 14, 2006).....	10
<i>Gillette v. Delmore</i> , 979 F.2d 1342 (9 <sup>th</sup> Cir.1993) .....	10, 12
<i>Griffin v. JTSI, Inc.</i> 654 F.Supp. 23 1122 (D. Haw. 2008) .....	14
<i>Kelly v. City of Oakland</i> , 198 F.3d 779 (9th Cir. 1999).....	16
<i>Lee v. Hawaii</i> , No. CIV0900032 SOM/KSC, 2010 WL 235009, at *5 (D. Haw. Jan. 20, 2010)..	8
<i>Pembaur v. City of Cincinnati</i> , 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986); .....	12
<i>Reeves v. Sanderson Plumbing Products, Inc.</i> , 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).....	9
<i>U.S. ex rel. Lockyer v. Hawaii Pacific Health</i> , 490 F.Supp.2d 1062 (D.Haw.2007) .....	14

<i>White v. Ultramar, Inc.</i> , 21 Cal. 4th 563, 981 P.2d 944 (1999) .....	13
<i>Winarto v. Toshiba Am. Elecs. Components, Inc.</i> , 274 F.3d 1276 (9th Cir. 2001) .....	9
<i>Young v. Allstate Ins. Co.</i> , 119 Haw. 403, 198 P.3d 666 (2008) .....	12
 <i>Statutes</i>	
Haw. Rev. Stat. § 378–62 .....	14

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MARK N. BEGLEY,

Plaintiff,

vs.

COUNTY OF KAUAI, KAUAI  
POLICE DEPARTMENT; DARRYL  
PERRY; ROY ASHER; MICHAEL  
CONTRADES; AND DOE  
DEFENDANTS 16-100,

Defendants.

Civil No. CV16-00350 LEK-RLP

**CERTIFICATE OF COMPLIANCE  
WITH LOCAL RULE 7.5**

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.5**

I hereby certify pursuant to Rule 7.5 of the Local Rules of Practice for the United States District Court for the District of Hawaii that **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO [323] DEFENDANTS COUNTY OF KAUAI, KAUAI POLICE DEPARTMENT; DARRYL PERRY, in his official capacity; ROY ASHER, in his official capacity; MICHAEL CONTRADES,' in his official capacity, SUBSTANTIVE JOINDER TO [311] DEFENDANT DARRYL PERRY'S, in his individual capacity, MOTION FOR SUMMARY JUDGMENT, and [312] DEFENDANT ROY ASHER'S, in his individual capacity, MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S**

**SECOND AMENDED COMPLAINT**, contains 4620 words according to Microsoft Word's word count program.

DATED: Honolulu, Hawai'i, October 29, 2018.

/s/ LORETTA A. SHEEHAN  
LORETTA A. SHEEHAN  
CLARE E. CONNORS  
THOMAS M. OTAKE  
LYLE S. HOSODA  
ADDISON D. BONNER

Attorneys for Plaintiff